FREDRIC L. FLEETWOOD

IBLA 2003-250 Decided July 25, 2003

Appeal from a determination of the Field Manager, Butte Falls (Oregon) Resource Area, Bureau of Land Management, denying a protest of the decision to implement vegetation management involving understory fuels reduction treatments and fuel treatment within riparian reserves, culvert replacement, and road projects outlined as Alternative 2 in the Trail Creek Environmental Assessment, OR-110-02-05.

Decision affirmed; stay petition denied as moot.

1. Environmental Quality: Environmental Statements

A decision to undertake an action for which a finding of no significant impact has been made will ordinarily be affirmed when the record demonstrates that BLM has considered the relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging the decision must demonstrate either an error of law or fact and that burden must be satisfied by objective evidence as mere differences of opinion will provide no basis for reversal.

APPEARANCES: Fredric L. Fleetwood, Trail, Oregon, pro se; Lance E. Nimmo, Field Manager, Butte Falls Resource Area, Bureau of Land Management, Medford, Oregon.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Fredric L. Fleetwood has appealed from a January 9, 2003, decision of the Field Manager, Butte Falls (Oregon) Resource Area, Bureau of Land Management (BLM), denying his protest of the September 19, 2002, Decision Record (DR) for Fuel Hazard Reduction, Culvert Replacement & Road Projects. Fleetwood had filed a

protest under 43 CFR 5003.3 within 15 days of the published notice of issuance of the DR and Finding of No Significant Impact (FONSI). In the DR, BLM decided to implement vegetation management actions involving understory fuels reduction treatments and fuel treatments within riparian reserves, road related projects, and culvert replacements as described in Alternative 2 of the Trail Creek Environmental Assessment (EA), OR-110-02-05. The actions described in the DR constitute a relatively small part of the actions proposed in the EA. [1/] Fleetwood included in his appeal a request pursuant to 43 CFR 4.21 to stay "any implementation of the project's implied reduction of the Riparian Reserve canopy closures."

The Trail Creek EA, made available for public comment on June 21, 2002, was much broader in scope than the actions approved in the DR. The EA encompassed an analysis area of 35,000 acres, including 14,681 acres administered by BLM, and, hence, covered far more than the actions approved in the DR. The EA proceeded

> to analyze the effects of harvesting timber, reducing existing high stand densities and hazardous fuels within forested stands and road related projects (e.g., road upgrades, road closures) from this analysis area. The proposed actions would meet the goals and objectives of the Medford District Resource Management Plan (RMP) by contributing to the District's decadal Probable Sale Quantity while providing a healthy forest ecosystem with habitat that supports populations of native species and includes protection for riparian areas and water bodies. In addition, the proposed action is designed to meet objectives addressed in the Trail Creek Watershed Analysis such as timber stand improvement, forest health, fire hazard reduction and terrestrial and aquatic habitat improvement. These recommendations have been incorporated into project proposals presented in this EA.

(EA at 1.)

In addressing elements of the project included in the DR, the EA explains the goal of the hazardous fuels reduction:

[1/] Other proposed timber management actions including commercial thinning/ density management, selection harvest, south general forest management area treatments, north general forest management area treatments, and density management within riparian reserves, which actions were also analyzed in the EA, were not implemented in the DR. (DR at 1.) These actions were deferred, BLM explained, to allow for reassessment of the proposed timber harvest in view of the Wall Creek Fire which burned in the Trail Creek Watershed in July 2002. These actions are not ripe for review in the current appeal.

> The objectives of the proposed projects are to treat natural stands that are currently in an overstocked condition and reduce hazardous fuels accumulation, which occurs naturally, or from harvest activities. The project goals are to utilize fire or simulate fire effects in the ecosystem as a disturbance agent, and reduce the risk and consequences of unwanted wildland fire to wildland urban interface areas identified as high risk communities.

(EA at 1.) The EA proposed a separate component of fuel hazard reduction within riparian areas in conjunction with an objective of density management. The density management objective encompassed actions on 157 acres "to thin areas of the stand to promote the development of late successional stand characteristics within the Riparian Reserve, faster than the natural biological progression" with minimum short-term adverse impacts while meeting Aquatic Conservation Strategy (ACS) Objectives. Id. at 2, 32. The fuels hazard reduction component of the riparian reserves treatment would occur within 328 acres with an objective "designed to reduce fuel amounts and the risk of catastrophic fires." Id.

> Fuel hazard reduction is the primary treatment proposed in a number of riparian reserves. The objective of the fuel treatment prescription is to identify and treat Riparian Reserves that are overstocked and a high fuels hazard. Provide strategic areas where the likelihood of crown fires would be reduced during wildfires, target areas near homes and structures, and protect riparian ecosystems from catastrophic change. Under certain climatic conditions and topographic conditions, stream draws on the lower and middle third of the mountain may act as fire pathways and channel wildfire up a mountain slope. The fuels reduction prescription would remove small non-commercial seedlings, saplings and poles and reduce the amount of ground fuels, ladder fuels and risk of catastrophic fires. A secondary benefit to the riparian ecosystem is the reduction of competition from typically over-stocked conifer under-story with the likely benefit of retaining a more vigorous and healthy over-story.

(EA at 8.) Out of the entire BLM project area of 14,681 acres, the EA proposed fuel hazard reduction within riparian reserves for only 328 acres in secs. 23 and 35, T. 33 S., R. 2 W.; sec. 17, T. 33 S., R. 1 W.; and secs. 1 and 3, T. 34 S., R. 1 W, Willamette Meridian, Oregon. Id.

In addition to fuel hazard reduction as described above, the EA contained objectives regarding improving stream condition through road improvements. Regarding road-related projects, the EA noted that:

> Table 3-5 in the Trail Creek Watershed Analysis shows that roads are the single greatest source of management related delivered sediment in the watershed. Factors contributing to road sediment delivery include[] long contributing road lengths between cross drains, unsurfaced or lightly surfaced roads and relatively high road and stream densities. Roads left in these conditions will continue to erode and contribute to sedimentation to the stream system. Many of these roads may not be needed for access in the long[] or short term and should be considered for decommissioning to aid in reducing road related sedimentation.

(EA at 1.)

The decision to proceed with "fuel hazard reduction, culvert replacement, and road projects" was issued by BLM on September 19, 2002, accompanied by a separately issued FONSI. As noted above, the DR adopted only a small portion of the overall project addressed by the EA. In particular, the decision was to implement understory fuels reduction treatments, fuels treatments within riparian reserves, road projects, and culvert replacements. The DR expressly stated that it was choosing not to adopt proposals for density management, commercial thinning, or selection harvest. The DR stated that the proposed actions

> are consistent with management objectives and silvicultural systems for the public lands identified in the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (SEIS), approved April 13, 1994, [2/] the *Record of Decision and Resource Management Plan for the*

[2/] In response to emerging environmental issues related to timber harvests in old growth forests in this area of the Pacific Northwest, including impacts to watersheds and protected species habitat, BLM, together with the Forest Service, U.S. Department of Agriculture, prepared a Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl dated Feb. 1994 (FSEIS), which analyzed alternatives for the comprehensive management of timber and other natural resources on Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl. On Apr. 13, 1994, the Secretaries of Interior and Agriculture, based on the FSEIS, issued a ROD which adopted Alternative 9. See ROD at 4. That alternative incorporated Standards and Guidelines for timber harvesting and related activity. See ROD at 4; ROD, Attachment A. Included in the Standards and Guidelines is the ACS, "developed to restore and maintain the ecological health of watersheds and aquatic ecosystems

(continued...)

> Medford District (RMP), approved June 1995, the *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standard and Guidelines*, (S&M ROD), approved January 2001, and *Managing Impact of Wildfires on the Communities and the Environment*, (USDA, USDI 2000).

(DR at 1.) The rationale for the decision was explained as follows:

> Alternative 2 of the EA was selected because vegetation treatments will result in a reduction of hazardous fuels in the Wildland-urban interface, especially near areas identified as Communities at Risk. Vegetation treatments will also reduce the understory vegetation densities and ladder fuels to decrease fuel continuity which, in turn will decrease the fire spread potential between lowland and upland areas. In addition, the road related projects will reduce the potential for road generated sediment to reach streams. Culvert replacements will provide for fish passage at designated fish bearing stream crossings to increase habitat accessibility and allow steam crossings to accommodate 1 in 100-year flood events.

(DR at 1.)

In his protest filed October 7, 2002, Fleetwood first observed that there is too little canopy closure. Focusing on BLM's statement in the EA at 1, "Canopy closures greater than 60% and existing ladder fuels * * * create high fuel hazard and potential for sustained crown fires," he asserted that only the ladder fuels to the level of 20 feet need be eliminated and that reducing crown closure to 60% is undesirable in riparian areas. (Protest at 2.) In his protest, Fleetwood stated that in his opinion the value of more shade and the resultant reduced stream temperatures outweigh the short-term risk of fire. Id. He further objected to lack of sufficient identification of the location of project actions on the map. Fleetwood's protest asserted that the EA was inadequate in scope and that an environmental impact statement (EIS) should have been prepared on the grounds BLM improperly segmented the scope of the project by separating the wildfire fuel reduction components from the balance of the project and erred in relying on the Biological Opinion (BO) issued by the National Marine Fisheries Service (NMFS) to the effect that the project is not likely to affect the coho salmon. Id. at 4. He also protested the tiering of the EA to the FSEIS for the NFP and

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[2/] (...continued)
contained within them on public lands." (ROD, Attachment A at B-9.) These documents are collectively referred to as the Northwest Forest Plan (NFP).

the Medford District RMP, noting that detrimental effects will occur in riparian areas when vegetation is removed. Id. at 5.

In its decision dismissing the protest dated January 9, 2003, BLM addressed the concerns raised in the Fleetwood protest. Specifically addressing fuel hazard reduction within riparian reserves, BLM pointed out that the approved project involved only 328 acres or less than 1% of the analysis area. (Decision at 3.) With respect to his argument that "60% canopy closure for riparian reserves" is undesirable because of impacts to stream temperature, BLM noted that the proposal to "[m]aintain canopy closure at 60% or greater" (EA at 8), was selected as a result of stand conditions, field observations, trial markings, and riparian surveys. (Decision at 1.) Further, BLM observed that "[p]roject design criteria" have been developed that will buffer and protect the "core riparian/aquatic area of 50 feet on either side of the stream channel while allowing some modified fuel treatment activities outside the core area but within the riparian reserve." Id. Thus, BLM concluded that, with the retention of all vegetation within 50 feet on either side of the stream and other measures, the reduction in shade levels over the stream channel will be negligible and that the proposed fuel treatments will not adversely affect the stream temperatures. Id. at 2. Regarding Fleetwood's objection to the EA on the basis that it fails to pinpoint the location of some of the proposed projects, BLM found that for purposes of the analysis the general location provided was sufficient to identify any impacts or mitigation that would influence the decision. Id.

In addressing the contention that an EIS should have been prepared for the project, BLM held that the EA properly addressed whether there are significant environmental impacts which were not analyzed in the EIS's prepared for the RMP and the NFP to which this EA was tiered. On the question of the proper scope of the EA, BLM points out that both the timber sale and fuel treatment aspects of the project were analyzed in a single EA. Separate decisions on these aspects of the project were dictated, BLM notes, by the identified need to proceed with the fuels treatment pending further analysis of the timber sale due to the effects of the intervening Wall Creek Fire. (Decision at 2.) Responding to Fleetwood's belief that the project will adversely affect fish habitat, BLM explained that he had not provided any evidence which would undermine the contrary BO which BLM obtained in consultation with the U.S. Fish and Wildlife Service and the NMFS. Id. at 3.

Fleetwood submitted a Notice of Appeal, Request for Stay, and Statement of Reasons (SOR). Notably the appeal is not focused on the specific action chosen by BLM, but rather addresses general effects he contends will occur within riparian reserves as a result of "the very likely reduction of 'riparian reserve' tree canopy closures down to 60%." (SOR at 1.) It is not entirely clear whether his challenge is to the DR and FONSI or to other proposals, in particular density management,

addressed in the EA but not implemented in the DR.[3/] In any event, Fleetwood contends that BLM is erroneously focused on the stands of trees in the riparian reserves and is not paying attention to the "diminishment" of water that would be caused by reduction in the canopy closure. Id. Disputing the BLM analysis of the effects of shade in the buffers on either side of the stream, appellant asserts the FONSI is inappropriate because disturbance of the canopy will allow too much sunlight to reach riparian soil and diminish the quantity of water in the stream. Id. at 2-3. Fleetwood argues that tiering the EA to the EIS for the NFP is inappropriate because its focus on the Northern spotted owl is detrimental to aquatic life such as the threatened coho salmon. Id. at 4. Further, Fleetwood argues that BLM has not satisfactorily demonstrated that its projects will produce "negligible" or "minimal" impacts and the conclusions found in the EA are mere opinions of those participating. He refers the Board to an uncited Ninth Circuit Court of Appeals case concerning governmental failure to ensure adequate protection of salmon habitat during timber harvest activities and argues that this precedent applies in this appeal.

In its Answer to the SOR, BLM argues that the issues raised by appellant here were addressed in its decision and appellant has failed to demonstrate specific errors of law or fact in the decision. Further, BLM contends that appellant has not offered information not already considered and addressed in the EA or decision process, but merely disagrees with BLM's reasoned responses and conclusions. In particular, BLM asserts that two research papers cited by appellant do not address the effects of thinning on base flows, but rather evaluate the effects of clear cut logging.

With respect to Fleetwood's petition for a stay of implementation of the project pending our decision on administrative review, [4/] we note the Department has recently evaluated the "emergency" nature of wildfire management decisions and promulgated regulations addressing the priority of issuing decisions in such cases. See 68 FR 33794 (June 5, 2003). Under these regulations, which recognize the need for rapid resolution of appeals involving wildfire management decisions, the Board expedites such matters ahead of other cases on our docket in order to issue a decision on the merits of the appeal "within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed." Id. at 33800, 33803-04 (adding 43 CFR

[3/] Maintenance of the tree canopy closure at 60% or greater is an objective of the combined goal of density management and fuel hazard reduction in riparian reserves. See EA at 8, 32.

[4/] Upon denial of the protest, BLM was authorized to proceed with implementation. 43 CFR 5003.3(f). The BLM decision dismissing the protest expressed the intention to implement the decision pursuant to this regulation.

4.416, 5003.1(c)). Accordingly, we have expedited our review on the merits. [5/] As a result of our decision on the merits, the stay petition is rendered moot.

[1] A BLM decision to undertake an action, which was analyzed in an EA and for which a FONSI has been issued, will ordinarily be affirmed when the record demonstrates that BLM has considered the relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Southern Utah Wilderness Alliance, 158 IBLA 212, 219 (2003); see Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973); Wyoming Outdoor Council, 158 IBLA 155, 160 (2003). In this instance, appellant challenges BLM's conclusion that there will be no significant impact on the aquatic environment resulting from the proposed fuel treatment on riparian reserves. As a general rule, the Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Umpqua Watersheds, Inc., 158 IBLA 62, 67, 84 (2002); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 173-74 (1984). The record should therefore establish that the FONSI and decision to proceed were based on reasoned decisionmaking. However, the ultimate burden of proof is on the challenging party to demonstrate either an error of law or fact and that burden must be satisfied by objective evidence; mere differences of opinion provide no basis for reversal. Larry Thompson, 151 IBLA 208, 217 (1999); Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990).

Fleetwood's asserted basis of error concerns the "diminishment" of water, which he argues will be caused by a reduction in canopy closure. He emphasizes that his objections to BLM's proposed actions relate to the "excessive" removal of tree canopy closures, not the removal of fire hazard ground and ladder fuels. Fleetwood disputes BLM's assertion that he did not provide any scientific support, claiming that two research papers and his observations thereon provided in his July 2002 comments on the EA adequately demonstrate the adverse effects vegetation removal has on the aquatic environment. He asserts that these papers, Jones, J.A., and Grant, G.E., Peak Flow Response to Clear-Cutting and Roads in Small and Large Basins, Western Cascades, Oregon, Water Resources Research, 32(4) 959-974 (Apr. 1996) (Jones-Grant), and Rhodes, Jonathan, and Purser, Michael, Thinning for Increased

[5/] Although the appeal in this case was filed on Jan. 27, the appeal was not transmitted by BLM to the Board until June. The case was received and docketed by the Board on June 9. The pleadings of the parties were among the documents received at that time.

Water Yield in the Sierra Nevada: Free Lunch or Pie in the Sky? (Pacific Rivers Council, Aug. 1998) (Rhodes-Purser), show that "logging and logging-related activities" dramatically increase and shift the annual stream peak flow and diminish the watershed base flow by contributing to snow pack loss, soil compaction, and soil loss, thus refuting BLM's FONSI for the proposed action.

Upon review of the selected excerpts appellant has provided from the Jones-Grant paper,[6/] we find little support for his arguments as this paper addresses the effects of clear cutting and road building on stream flows. Clear cutting is not authorized by the DR. (Selected excerpts at 3, 4.) A total of 1.2 miles of temporary new road spurs would be constructed which would be fully decommissioned after harvest. (EA at 8.) Road construction would occur away from streams and any temporary increase in sediment is not likely to be transported to streams. Id. at 34. In addition, 1.8 miles of existing road would be decommissioned and left in an "erosion-resistant" condition and 1.3 miles of road would be fully decommissioned and reclaimed. Id. at 9. Another 32.2 miles of existing road would be improved to reduce erosion and sediment deposits in streams. Id. at 8; see also EA at 16, 20 (charts). The EA acknowledges that road-related projects, including road maintenance, renovation, decommissioning, and culvert replacement, could have a short-term negative impact on fisheries and aquatic resources as a result of sediment generated, but finds that this would be minimized by design features and that long-term improvement in aquatic resources is anticipated from reduction in road-generated sediment as a result of these measures. Id. at 33.

According to the discussion in the Rhodes-Purser paper, potential sedimentation and increased stream temperatures are the major concerns facing the fish habitat. (Rhodes-Purser at 14-15, 16.) However, the paper also suggests that most of the sedimentation is delivered from existing roads and road construction. Id. at 8, 10, 12. Citing roadbuilding as a major concern for its deleterious effects on the aquatic environment, the paper advocates fewer roads in the watershed. Id. at 16-17. As for vegetation management, the paper suggests that riparian areas be protected by no-harvest buffer zones. Id. at 17. While the paper talks of impacts from thinning, it is not possible to discern that such impacts relate to fuel hazard reduction, as opposed to clear cutting or selective logging. Id. at 6-7.

The EA in this case provides that no roads, temporary spurs, or skid trails would be developed within the riparian reserves of the project. (EA at 8.) In addition, BLM found that its action would have no direct effect on the hydrology as "Riparian Reserves identified for treatment would include a no-treatment buffer to

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[6/] Presentation of selected quotations from a research paper, as appellant has done, limits the probative value of those statements because of the inability to view and understand the full context of the quoted language.

maintain stream shade, stream channel stability, and to minimize the chance for sediment to reach stream channels." Id. at 41. We note that the EA states there will be "no new openings in the riparian zone to allow for increased solar radiation on stream channels," thereby maintaining stream shade. Id. at 35. Accordingly, we are unable to find that the research papers cited by appellant have established error in the FONSI reached by BLM for this project, notwithstanding appellant's opinion to the contrary.

We note that BLM addressed appellant's concern with stream temperatures in the January 9 decision. Initially, BLM reviewed the fuels treatment plan as follows:

> The objectives of the fuels treatment within the Riparian Reserves are to reduce the risk of catastrophic stand replacement fires by reducing the ladder fuel component, and reduce the over-stocked conifer under-story. As stated in the EA, * * * "The Fuels reduction prescription would remove small non-commercial seedlings, saplings and poles and reduce the amount of ground fuels, ladder fuels and risk of catastrophic fires. A secondary benefit to the riparian ecosystem is the competition reduction from typically over-stocked conifer under-story with the likely benefit o[f] retaining a more vigorous and healthy over-story." (EA, p.8)
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> The proposed canopy closure within Riparian Reserves, as stated in the EA, "Maintain canopy closure at 60% or greater" (EA, p.8), was selected as a result of stand conditions, field observations, trial marking of trees on actual units in the riparian reserves and observations from similarly treated areas in other watersheds. Riparian surveys have been completed and the proposed stands meet criteria that would benefit stand development within the riparian reserve.

(Decision at 1.) After explaining the nature of the vegetative removal under the proposed fuels treatment plan, BLM concluded that this action will not be likely to adversely affect stream temperatures. Id. at 2. In particular, BLM stated that, by retaining all vegetation within 50 feet of the stream and all dominant trees, "the reduction in shade levels over the steam channel will be negligible from pre-existing levels." Id. We find that on appeal Fleetwood has neither shown error in that conclusion nor demonstrated BLM's decision was unreasonable or unsupported. The Department is entitled to rely upon its technical experts and, absent a showing of error by a preponderance of the evidence, a mere difference of opinion will not overcome the reasoned opinions of the BLM's technical staff. Southern Utah Wilderness Alliance, 158 IBLA at 216.

As noted, Fleetwood argues there is a conflict between developing late successional condition and short-term goals for maintaining healthy fish habitat. (Response to BLM Answer at 4.) Appellant also objected to tiering the EA to the FSEIS for the NFP on this basis. He questions the BLM FONSI in this matter, asserting that while recovery of riparian reserves will take 10 years, it is far too long for the life cycle of fish, a relatively short 3 to 4 years. Id. at 5. Appellant, however, overlooks the finding discussed above in which BLM concluded that, due primarily to the preservation of a buffer zone adjacent to the stream where no treatments would occur, the fuels treatments would not result in an increase in water temperatures. Importantly, Fleetwood fails to meet his burden of proving the FONSI is predicated on an error of law or fact. As noted above, his challenge appears to relate primarily to the density management objective expressly deferred in the DR. Considering the determination in the DR to adopt only fuel hazard reduction within riparian reserves for 1 percent of the management area, Fleetwood fails entirely to square his complaints of adverse impacts from "developing late successional condition" with the fuel hazard reduction implemented in the limited 328-acre riparian reserve area. Likewise, Fleetwood's complaints that the DR does not ensure consistency with the ACS fail to relate the decision to the concerns he raises. The Evaluation of Consistency With ACS Objectives (Consistency Evaluation) (Appendix F to the EA)[7/] noted that the effect of the entire project considered in the EA will be to maintain the riparian reserves indicator since, by maintaining a 50-foot no treatment buffer, bank stability, large wood supply, and stream shade will not be affected. Id. at (unnumbered) 2. Similarly, regarding temperature indicator for compliance with the ACS, the Consistency Evaluation found that the effects of the project would be to maintain this indicator in the fifth and sixth field watersheds, noting that the project "would not alter any streamside vegetation that would be expected to influence stream temperature." Id. at (unnumbered) 5. Fleetwood fails to prove that these broader conclusions are not pertinent to the fuel hazard reduction component of the EA.

Although appellant disagrees with the opinions of BLM and its specialists and the conclusions drawn therefrom, he has not shown that BLM failed to consider relevant evidence or that its conclusions are not supported by the record. As a general rule, when the BLM decision is based on consideration of all relevant factors

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[7/] Appendix F to the EA consists of two separate documents. In addition to the Consistency Evaluation which considered the effects of all aspects of the Trail Creek Project, there is the Consultation Report for Effects Determinations on Listed Fish Species and Designated Critical Habitat (Consultation Report), dated Mar. 15, 2002. In the latter document, focused solely on the fuels treatment element of the project, BLM concluded in an effects determination that the project may affect, but is not likely to adversely affect the coho salmon or its critical habitat. NMFS concurred in this finding in a June 27, 2002, letter to BLM.

and the record indicates that individuals knowledgeable in their fields contributed input to the decision, BLM is entitled to rely on their expertise. Absent a showing of error by a preponderance of the evidence, a mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical staff. Southern Utah Wilderness Alliance, 158 IBLA at 216; Susan J. Doyle, 138 IBLA 324, 327-28 (1997); American Gilsonite, 111 IBLA 1, 30, 96 I.D. 408, 424-25 (1989).

With respect to appellant's objection to tiering the EA to the FSEIS for the NFP, we note that the practice of tiering an EA and its analysis of specific impacts of a proposed action, which is part of a larger program, to a relevant programmatic EIS analysis of the broader cumulative impacts of the program is expressly sanctioned by Council on Environmental Quality regulations, 40 CFR 1508.28, and has been acknowledged by the Board and the courts. Ventling v. Bergland , 479 F. Supp. 174, 180 (D. S.D), aff'd, 615 F.2d 1365 (8th Cir. 1979); see Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1323 n.29 (8th Cir. 1974); Southern Utah Wilderness Alliance, 158 IBLA at 220; Blue Mountains Biodiversity Project, 139 IBLA 258, 267 (1997). Thus, this challenge must be rejected.

Finally, we find the litigation referred to by appellant in support of protecting salmon habitat, Pacific Coast Federation of Fishermen's Associations v. National Marine Fisheries Service, 265 F.3d 1030 (9th Cir. 2001), affirming in part and vacating in part, 71 F. Supp. 2d 1063 (W.D. Wash. 1999), to be distinguishable. That litigation involved a BO issued by NMFS regarding several timber sales in southwestern Oregon which found that the timber sales were not likely to adversely affect the Umpqua cutthroat trout or the Oregon Coast coho salmon. In the Pacific Coast case, the Ninth Circuit Court of Appeals affirmed a district court decision setting aside the BO issued by NMFS as arbitrary and capricious in that it limited ACS compliance analysis to the watershed level and ignored site-specific project effects that may have adverse effects on listed species. Finding that there was no evidence the NMFS considered the cumulative effect of small degradations at the project site over a whole watershed, the court held the no jeopardy finding was arbitrary and capricious to the extent it ignored locally degrading effects which can have significant aggregate effects. 265 F.3d at 1036-37. In particular, the court found no basis for failing to evaluate short-term project degradation impacts that would occur in less than 10 years (in excess of the life cycle of the anadromous fish) and relying upon the mitigation of short-term localized effects by the regrowth of timber in the long run when issuing a BO regarding effects to the species. 265 F.3d at 1037-38.

We find that, in addressing the consistency of the project with the ACS, BLM has analyzed the effects of the project at the site level as noted above. This distinguishes the present appeal from the Pacific Coast case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the stay petition is denied as moot.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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Lisa Hemmer
Administrative Judge